IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 19, 2006

STATE OF TENNESSEE v. MATTHEW MELTON JACKSON

Appeal from the Criminal Court for Davidson County
No. 2001-A-386 Steve Dozier, Judge

No. M2005-01374-CCA-R3-CD - Filed July 7, 2006

The Defendant, Matthew Melton Jackson, pled guilty to two counts of aggravated robbery and received an effective eight-year sentence in the Department of Correction. As part of his plea, the Defendant explicitly reserved, with the consent of the trial court and the State, a certified question of law: whether the Defendant was denied his federal and state constitutional rights to a speedy trial. After review, we affirm the judgment of the Davidson County Criminal Court denying the Defendant's motion to dismiss the indictment based on unnecessary delay.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JOSEPH M. TIPTON and JOHN EVERETT WILLIAMS, JJ., joined.

Emma Rae Tennent, Assistant Public Defender, Nashville, Tennessee, for the appellant, Matthew Melton Jackson.

Paul G. Summers, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Victor S. Johnson, District Attorney General; and Pamela Anderson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The facts in this case are largely undisputed. On October 9, 2000, the Defendant was arrested in Springfield, Tennessee, following the robbery of a Video Checkout Store and rape of a store employee. The Defendant was subsequently interviewed by numerous law enforcement officials from Kentucky and other counties in Tennessee, including Davidson County, for his suspected involvement in similar video store robberies. From the time of his October 9th, 2000, arrest, the Defendant has been in the continuous custody of either Tennessee or Kentucky authorities.

On October 10, 2000, Detective William Stewart of the Nashville Police Department interviewed the Defendant regarding his involvement in six late-night robberies of Nashville-area

video stores between December 1999 and August 2000, the offenses which are the subject of the present appeal. Based upon information obtained during the interview, Detective Stewart obtained warrants against the Defendant. It appears from the record that the warrants were never served on the Defendant, as they were "recalled" in June of 2001.

Detective Stewart appeared before a Davidson County grand jury on February 26, 2001, and an indictment was returned against the Defendant, charging him with six counts of aggravated robbery. Detective Stewart testified that he was not involved in service of the indictment. Regarding process on the indictment, service of the capias did not occur until March 9, 2004. Thereafter, on March 24, 2004, the Defendant was arraigned on the Davidson County robbery charges.

Meanwhile, in May of 2001, the Defendant pled guilty in the Robertson County Circuit Court to aggravated kidnapping, aggravated robbery, theft of property over $500.00, and two counts of aggravated rape. In July of 2001, he received an effective twenty-five-year sentence for these offenses. See Matthew Melton Jackson v. State, No. M2004-01342-CCA-R3-PC, 2005 WL 1220242 (Tenn. Crim. App., Nashville, May 18, 2005), perm. to appeal denied, (Tenn. Oct. 31, 2005) (post-conviction); State v. Matthew Melton Jackson, No. M2001-01999-CCA-R3-CD, 2003 WL 288432 (Tenn. Crim. App., Nashville, Feb. 7, 2003), perm. to appeal denied, (Tenn. May 12, 2003) (direct appeal). In Sumner County, Tennessee, on August 10, 2001, the Defendant pled guilty to four counts of aggravated robbery, and an effective sentence of ten years was imposed in accordance with the negotiated plea agreement. See Matthew M. Jackson v. State, No. M2003-02057-CCA-R3-CD, 2004 WL 2266800 (Tenn. Crim. App., Nashville, Oct. 7, 2004), perm. to appeal denied, (Tenn. Feb. 28, 2005). Following his guilty pleas in Robertson and Sumner Counties, the Defendant was extradited to Kentucky, as authorities there had placed a "hold" on the Defendant regarding video store robberies in Bowling Green. The Defendant was convicted by a Kentucky jury in August of 2003 of three counts of first-degree robbery by complicity and three counts of burglary by complicity. See Matthew M. Jackson v. Commonwealth, No. 2003-SC-000777-MR, 2005 WL 2045482 (Ky. Aug. 25, 2005). The Kentucky jury recommended an effective sentence of sixty years.[1] See id. At some point thereafter, the Defendant was returned to Tennessee authorities.

Following his March 24, 2004 arraignment in the Davidson County Criminal Court, the Defendant filed several pre-trial motions, including a motion to dismiss the indictment because his right to a speedy trial was violated. The motion was denied. Thereafter, the Defendant entered into a negotiated plea agreement, in which he pled guilty to two counts of aggravated robbery, counts five and six of the indictment, and the remaining counts were dismissed. The following facts were stipulated at the guilty plea hearing:

> [O]n Count Five, Your Honor, the State's proof would be that, on or about June fifth, at two -- in the year two-thousand, employees of the Blockbuster Video Store, at

[1] According to the Defendant, the Robertson and Sumner County sentences were to be served consecutively to one another. He also testified that the Kentucky sentence was to be served consecutively to the Robertson County sentence and that the Kentucky court was unaware of his Sumner County sentence.

Twenty-Seven-Thirty-Five Lebanon Road, were leaving, after having closed the establishment.

As they were leaving the store, the Defendant approached them armed with a chrome-colored semi-automatic pistol. He ordered the employees back into the store.

The Defendant had a canvas-type bag and demanded the money from the safe, as well as the money from the door, to be put in the bag.

When he got the money, he took all three employees to the back break-room and ordered them to lay facedown -- lie facedown in the floor. He also took a surveillance tape from the business.

The employees were able to give a description of the items that the Defendant was wearing.

When the Defendant was arrested in Springfield, on a robbery from a Video Checkout Store, he was wearing clothing that matched this description, also was arrested with a chrome semi-automatic pistol.

When he was interviewed by the Metro Police Department detectives, he admitted committing this robbery.

As to Count Six, Your Honor, the State's proof would be that, on August twenty-fourth of the year two-thousand, once again after midnight, the Blockbuster Video Store, at Thirty-Nine-Eighty-Nine Nolensville Road, here in Nashville, Davidson County, was robbed.

The Defendant approached two employees, who were standing outside the front door. He ordered them back into the store. He ordered one of the employees to open the safe and put the money in the grey bowling-type bag.

The Defendant then took the surveillance tape and ordered the employees to the back of the store until he was gone.

The Defendant was armed with a small, semi-automatic pistol and was wearing a black ski mask, glasses, camouflage jacket, black pants, and black boots.

When he was arrested in Springfield on the previously-mentioned charge, he was wearing the clothing that matched this description, the same type clothing that was in the previous robbery just mentioned.

During the interview the -- with the police detective, the Defendant admitted to committing this robbery.

In exchange for his plea, he received concurrent sentences of eight years as a Range I, standard offender for each conviction, which sentences were likewise to be served concurrently with "all other sentences."

As part of his plea agreement, the Defendant, pursuant to Rule 37(b)(2)(i) of the Tennessee Rules of Criminal Procedure, explicitly reserved the right to appeal a certified question of law dispositive of the case: whether the Defendant was denied his federal and state constitutional rights to a speedy trial. The plea was accepted by the trial court on May 12, 2005. The Defendant timely appealed and now presents this certified question for review.

ANALYSIS

The Defendant argues that he was not afforded a speedy trial. The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and applicable to the states through the Due Process Clause of the Fourteenth Amendment. Barker v. Wingo, 407 U.S. 514, 515 (1972). Likewise, the right to a speedy trial is guaranteed by article 1, section 9 of the Tennessee Constitution. State v. Simmons, 54 S.W.3d 755, 758 (Tenn. 2001). The Tennessee legislature has codified this constitutional right at Tennessee Code Annotated section 40-14-101. Moreover, Tennessee Rule of Criminal Procedure 48(b) provides for the dismissal of an indictment "if there is unnecessary delay in bringing a defendant to trial[.]"

When a defendant contends that he was denied his right to a speedy trial, the reviewing court must conduct a four-part balancing test to determine if this right was, indeed, abridged. Barker, 407 U.S. at 530. This test includes consideration of (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) the actual prejudice suffered by the defendant because of the delay. Id.; see also State v. Bishop, 493 S.W.2d 81, 84 (Tenn. 1973).

The right to a speedy trial attaches at the time of the actual arrest or formal grand jury action, whichever occurs first. State v. Utley, 956 S.W.2d 489, 493-94 (Tenn. 1997). The length of the delay between the arrest or grand jury action and trial is a threshold factor and, if that delay is not presumptively prejudicial, the other factors need not be considered. Barker, 407 U.S. at 530. A delay of one year or longer "marks the point at which courts deem the delay unreasonable enough to trigger the Barker inquiry." Doggett v. United States, 505 U.S. 647, 652 n.1 (1992); see also Utley, 956 S.W.2d at 494. The reasonableness of the length of the delay depends on the complexity of the case. Barker, 407 U.S. at 530-31. Moreover, the presumption that pre-trial delay has prejudiced the accused intensifies over time. Doggett, 505 U.S. at 652.

As previously noted, the indictment was issued on February 26, 2001, but was not served upon the Defendant until March 9, 2004. Obviously, the approximate three-year delay between return of the indictment and service of the capias crosses the one-year threshold necessary to trigger the full speedy trial analysis; however, this period of delay "is not necessarily unreasonable when

compared to other cases." Simmons, 54 S.W.3d 755 at 759 (comparing State v. Wood, 924 S.W.2d 342, 346 (Tenn. 1996) (delay of thirteen years); Doggett, 505 U.S. at 653 (delay of six years)).

We turn, then, to weighing the three remaining Barker factors to determine whether the Defendant's rights to a speedy trial were violated. The second Barker factor is the reason for the delay. The possible reasons for the delay of a defendant's trial fall into four categories: "(1) intentional delay to gain a tactical advantage over the defense or delay designed to harass the defendant; (2) bureaucratic indifference or negligence; (3) delay necessary to the fair and effective prosecution of the case; and (4) delay caused, or acquiesced in, by the defense." Wood, 924 S.W.2d at 346-47. There is nothing before this Court to suggest that the cause for the delay here is attributable to the Defendant. The charges in Robertson and Sumner Counties were timely resolved, and, upon entering his guilty pleas, the Defendant was transferred to the Department of Correction. The State had custody of the Defendant and chose not to try him on the Davidson County robberies prior to his extradition to Kentucky.

The governor of this state never waives jurisdiction over the accused by entering into an extradition proceeding. See Tenn. Code Ann. § 40-9-130; State v. Tommy Wayne Simpson, No. E2000-02993-CCA-R3-CD, 2001 WL 1543470, at *3 (Tenn. Crim. App., Knoxville, Dec. 4, 2001). However, "[d]elays between indictment and trial which are occasioned by actions of members of the executive branch of government . . . must be considered the responsibility of the State." State v. Kolb, 755 S.W.2d 472, 474 (Tenn. Crim. App. 1988) (citations omitted). Additionally, we note that Detective Stewart testified at the Kentucky trial. In summary, the delay in this case was unnecessary and "the product of bureaucratic miscommunication or indifference . . . which, reasonably speaking, was not unavoidable." Id. at 474-75. Because the State offered no valid reason for the delay in serving the capias, this factor is weighed favorably for the Defendant and against the State, although not as heavily as a deliberate delay. See Wood, 924 S.W.2d at 347.

The third Barker factor is the Defendant's assertion of his right to a speedy trial. Both the Tennessee and United States Supreme Courts have recognized that "an accused who is unaware that charges are pending against him or her, as is often the case where an indictment has been sealed and not served, cannot be penalized for his or her failure to assert the speedy trial right." Id. at 351 n.13 (citing Doggett, 505 U.S. at 652-54; Wright v. State, 405 S.W.2d 177, 180 (Tenn. 1966)). The Defendant is under no duty to bring himself to trial; the "primary burden, after all, is on the courts and prosecutors to assure that cases are brought to trial." Id. at 347. It appears from the record that the Defendant was unaware of the charges contained in the indictment until three years after its return. Therefore, the Defendant "cannot be penalized for failing to assert his speedy trial right earlier." Simmons, 54 S.W.3d at 760.

The fourth Barker factor - whether the Defendant was prejudiced by the delay - is the most important. Wood, 924 S.W.2d at 348. "Prejudice . . . should be assessed in the light of the interests . . . the speedy trial right was designed to protect," which are "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." Barker, 407 U.S. at 532. The last of these three is the most

serious because of its potential to "skew[] the fairness of the entire system." Id. Regarding impairment of the defense, the Tennessee Supreme Court and United States Supreme Court have both acknowledged:

> [I]mpairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony "can rarely be shown." . . . [E]xcessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other Barker criteria, it is part of the mix of relevant facts, and its importance increases with the length of the delay.

Wood, 924 S.W.2d at 348 (citing Doggett, 505 U.S. at 655).

The Defendant's continuous incarceration was not the result of these proceedings alone, and the Defendant could suffer little anxiety regarding these charges if he was unaware of them. The Defendant's prejudice argument focuses on the third factor: impairment of his ability to prepare a defense. On appeal, the Defendant submits that he was prejudiced by this delay "in that his ability to coordinate the defenses in his various cases and to investigate his alleged accomplices was impaired by the State's delay." We find no evidence in the record that the delay affected the Defendant's ability to prepare an appropriate defense.

The trial court found that the Defendant's allegation of accomplices was a credibility issue and, therefore, a question for the jury. We agree. The State's proof consisted of eyewitness accounts of the robberies, physical evidence obtained from the Defendant's residence and vehicles, and his confessions. The Defendant claimed that he acted as a lookout for several of the robberies. However, he identified his accomplices only as "Dude" and "CD" and was unable to offer any information regarding the location of these individuals. We note that, in fact, the Defendant was convicted in Kentucky of first-degree robbery by complicity and first-degree burglary by complicity. It appears that he was found responsible through the conduct of others. There is no proof that the delay itself caused any change in the Defendant's ability to determine the names, identities, existence, or whereabouts of alleged accomplices.

The Defendant also claims that, due to the delay, he "lost the opportunity to have his Nashville court-appointed counsel develop common strategies and theories with counsel appointed in the other jurisdictions, assist in preparing and presenting motions upon issues common to the cases, and exchange evidence in mitigating at sentencing." These vague assertions do not demonstrate prejudice of any sort. There is no explanation of how defense counsel were frustrated in their efforts to assist the Defendant. State v. Paul Graham Manning, No. M2002-00547-CCA-R3-CD, 2003 WL 35, at *10 (Tenn. Crim. App., Nashville, Dec. 15, 2003). Moreover, the Robertson and Sumner County cases proceeded simultaneously, and there is no evidence that a "package deal" was ever contemplated.

The evidence in this case apparently has not been affected by the passage of time, and concurrent sentencing was imposed. The Defendant has failed to demonstrate prejudice resulting from the unnecessary delay. See generally State v. Ricky Grover Aaron, No. M2002-02288-CCA-R3-CD, 2004 WL 1533825, at *6 (Tenn. Crim. App., Nashville, July 8, 2004).

CONCLUSION

Applying the Barker factors, we conclude that the Defendant's right to a speedy trial has not been violated. We conclude that the trial court did not err by denying the motion to dismiss the indictment.

Accordingly, the judgment of the trial court is affirmed.

_____

DAVID H. WELLES, JUDGE